

# Committee on Resources

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## Witness Testimony

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**Statement of Edward B. Cohen, Deputy Solicitor,  
Department of the Interior,  
Before the House Subcommittee on National  
Parks and Public Lands,  
Concerning Negotiations with the  
Miccosukee Tribe Regarding  
Their Special Use Permit Within  
Everglades National Park.  
September 25, 1997**

Mr. Chairman and members of the subcommittee, thank you for this opportunity to discuss the Department of the Interior's discussions with the Miccosukee Tribe regarding their special use permit. The Department's focus in these negotiations is to protect the natural resources of the Everglades National Park and to provide more autonomy to the Miccosukee Tribe of Indians of Florida in the use and occupancy of the special use permit lands within the Park.

In 1934, Congress authorized Everglades National Park to preserve intact a unique ecosystem found nowhere else in the world. The Park preserves a vast wetland of global significance and is the remaining finest example of South Florida's subtropical ecology. It includes sawgrass prairies, cypress swamps, tropical hardwood hammocks, mangrove forests and other fragile environments such as Florida Bay.

In recent years, the Park has been at the center of a complex and massive federal and state effort to restore and preserve the South Florida ecosystem. This effort is spearheaded by a federal, state, tribal and local task force. Among the objectives of that task force are: (1) managing hydrological conditions in undeveloped and restorable lands to maximize the historic water regimes and natural processes; (2) ensuring that future development is compatible with the goals of ecosystem restoration and long-term preservation; and (3) ensuring that development does not preclude restoration efforts. The Miccosukee and Seminole Tribes of Florida have actively supported these goals and participated in the current restoration effort.

The Miccosukee Tribe occupies an area within the Park pursuant to the terms of a 50-year special use permit issued to the Tribe in 1964 by the Secretary of the Interior in accordance with the Park's authority under the various laws governing the administration of the Park. The special use permit was issued "for the purpose of (providing) administrative and educational facilities and to provide places for the Miccosukee Indians to live, make and sell handicraft." It allows the Tribe to occupy approximately 333 acres in a linear strip five miles long and 500 feet wide within the northern boundary of the Park. The special use permit expressly requires National Park Service approval for the Miccosukees to construct buildings and structures or to otherwise dredge or fill on the area in a manner that will not affect the water quality or interfere with the free flow of water through or over Parklands. In interpreting this general guidance, the Park must balance development in the Miccosukee permit area with the protection and perpetuation of Park resources.

Today, about 134 homes and an 18-acre tribal government complex sit in Everglades National Park. That complex includes a tribal head quarters, schools, health clinic, police station, court house, and several other structures. This modern-day community is located immediately downstream of structures that deliver the Park's water from the north. Enough clean water delivered at the right time and right place will save the Everglades. Realization of this objective has become a multi-billion dollar effort. It is for this reason that the Park has sought to carefully evaluate the scope, scale and location of the Miccosukee presence. The most

recent issue -- the Tribe's desire to construct 65 new homes after completing 51 new homes in 1993 -- led to a significant deterioration in relations between the National Park Service and the Tribe. The Tribe sued the Park in 1994 arguing that the Park should immediately permit the construction of these homes. That suit is still unresolved. The Park authorized 95 new home sites, although not in the configuration that the Tribe had requested. The Park also agreed that construction could begin on 30 houses last fall. The Tribe maintains that building in the alternative configuration would require construction of new and expensive infrastructure. Nevertheless, construction on the initial 30 homes for which there is agreement is underway.

The special use permit calls for a large amount of Park oversight. The Tribe views this as an intrusion on their sovereign authorities, creating an inherent tensions between the Park and the Tribe. For the Park's part, it simply seeks to carry out obligations under the permit in order to protect Park resources.

The National Park Service proposes the replacement of the special use permit with a new legal framework which respects Tribal sovereignty, acknowledges the Tribe's desire to live in the Park in perpetuity, and which places specific obligations on the Tribe to assure that their presence is not inconsistent with our efforts to protect and restore the Everglades and Everglades National Park. We have developed the outline of a legislative proposal incorporating that framework and have transmitted it to the Tribe for review and input.

Implementing a solution involves solving a host of natural, cultural and visitor use issues. Among them, as examples, are that the Tribe would need to prevent and abate any degradation of the quality of surface water which enters the contiguous Tribal land and any surface or ground water that is released directly or indirectly into the Park from these lands. Also, flow ways would need to be maintained for the unimpeded flow of water with no construction or fill in those areas. Attention also needs to be paid to the preservation of native plant communities and the prevention of the introduction or maintenance of exotic plants. Developmental actions should not interfere with the preservation of stable wildlife populations and native species diversity while maintaining adequate wildlife migration routes.

We approach these discussions with the Tribe with high hopes and the view that the Department and the Tribe are partners in restoring the ecological health of the Everglades. The Tribe and the Park will always be neighbor. Both recognize that development in this particularly sensitive area may generate impacts to the Park.

Downstream effects of development occur regardless of land ownership. Only by working together with common goals can we jointly protect the fragile ecosystem of the Everglades.

The Tribe has had the Department's draft of a legislative proposal for several weeks and their initial informal reactions have been promising. We are committed to reaching a solution and stand ready for further discussions.

This concludes my prepared remarks. I will be pleased to respond to any questions you may have.

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